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SERIAL NUMBER	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/377,449 01/24/95 SMITH

P EXAMINER

TRAN.K

F1M1/0531

ART UNIT

PAPER NUMBER

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12

3101

DATE MAILED:

05/31/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 04/29/96 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s) 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- Notice of References Cited by Examiner, PTO-892.
- Notice of Draftsman's Patent Drawing Review, PTO-948.
- Notice of Art Cited by Applicant, PTO-1449.
- Notice of Informal Patent Application, PTO-152.
- Information on How to Effect Drawing Changes, PTO-1474.
- _____

Part II SUMMARY OF ACTION

1. Claims 1, 7-11, 19-21, 16, 17 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims 18 have been cancelled.

3. Claims 2-6, 12-15 are allowed.

4. Claims 1, 7-11, 19-21, 16, 17 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. The proposed additional or substitute drawings, filed on 04/29/96, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

2. Claims 1, 7, 8, 9, 19, 20 and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Rubino in view of White as applied in paper number six (6) on 02/06/96.

In addition, it is also obvious to a person in the art of to enclosed the oven with a microwave door in order for it to be operable.

3. Claims 10 and 11 are rejected under 35 U. S. C. 103 as being unpatentable in view of White and further in view of Flubacker as previously applied in paper number six on 02/06/96.

3. Claims 16 and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over Rubino in view of Adams as applied in previous rejections in paper number six on 02/06/96.

Allowable Subject Matter

4. Claims 2-6 and 12-15 are allowable over the prior art of record.

Response to Amendment

5. Applicant's arguments filed in amendment filed on 04/29/96 have been fully considered but they are not deemed to be persuasive. Applicant's argument of the use of a single oven door and its opening means does not alleviate the obviousness for Rubino modification. The concept of the nutating oven provides a transferring means of food portion which necessitates only one door. Thus a person skilled in the art, if provided with the teachings of Rubino and White references, would modify Rubino's oven per white's teaching. The combined teaching in Rubino and

White references suggested all of the claim limitations leading to a *prima facie* case of obviousness.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran at telephone number (703) 308 1113.



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SUPERVISORY PATENT EXAMINER
GROUP 3100

